

# BUTZEL LONG

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June 20, 2011

*Via Electronic Filing & E-mail*

Hon. Robert D. Drain  
U.S. Bankruptcy Court  
Southern District of New York  
300 Quarropas Street  
White Plains, New York 10601-4140

**Re: Proposed Agenda for June 21, 2010**  
**Adversary Proceedings: DPH Holdings Corp et al.,**  
**Case No. 05-04481 (RDD)**

Dear Judge Drain:

This Firm represents the Reorganized Debtors in certain preference actions arising from the above-referenced chapter 11 case (the “Adversary Proceedings”). The hearing principally arising from the Reorganized Debtors’ Motions for Leave to File Amended Complaints (the “Motions”) is scheduled for tomorrow, Tuesday, June 21, 2011, at 10:00 A.M.

## **BACKGROUND**

On September 7, 2010, the Reorganized Debtors filed Motions in one hundred twenty-two (122) Adversary Proceedings. Subsequently, seventy (70) Defendants (the “Respondents”) filed briefs in opposition, and the Reorganized Debtors filed an omnibus reply brief (the “Reply”) in further support of the Motions on January 28, 2011. The enclosure identifies (a) the cases in which the Reorganized Debtors filed Motions, (b) the Defendants that filed briefs in opposition to the Motions, and (c) which of the cases in which the Reorganized Debtors filed motions remain active.

On or about October 22, 2010, certain Defendants filed Motions for Relief from Fourth Order Extending Time to Serve Complaints (the “Fourth Extension Challenges”), to which the Reorganized Debtors responded by filing an omnibus brief in opposition on February 3, 2011.

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On December 17, 2010, the Court, the Reorganized Debtors, and various Respondents participated in a conference call (the "Conference") to identify which of the myriad issues raised in opposition to the Motions would be heard at the first hearing on the Motions.

### **AGENDA**

Based on the issues and matters designated during the Conference by the Court to be addressed at the hearing on June 21, 2010, one of which (number 4 below) is unrelated to the Motions, the Reorganized Debtors respectfully submit the following proposed hearing agenda:

1. Whether the Reorganized Debtors' Proposed Amended Complaints meet the Rule 8 pleading standard pursuant to *Twombly* and *Iqbal* and also comply with the Dismissal Order entered by this Court on September 7, 2010;
2. Whether certain individual preferential transfers alleged in the Proposed Amended Complaints, but not alleged in the Original Complaints, should now be dismissed because they do not relate back to the dates the Original Complaints were filed;
3. With respect to Defendants that raise a contract assumption defense at the hearing, whether the factual disputes between the Reorganized Debtors and those Defendants warrants further discovery and investigation;
4. Argument on the Fourth Extension Challenges; and
5. The procedures to be implemented to adjudicate the case-sensitive, non-pleading-based, factual issues that the Defendants originally raised in their Motions to Vacate and Dismiss, and then raised again in opposition to the Motions. Those issues include, by way of example and not limitation, issues related to notice and prejudice in connection with the Rule 4(m) orders.

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We thank the Court for its time and attention to this matter.

Respectfully,

/s/ Cynthia J. Haffey

Cynthia J. Haffey

Enclosure

cc: OPPOSING COUNSEL IN ADVERSARY PROCEEDINGS

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